BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ZAKARY JOHNSTON, Respondent.	Case No. 06-0065 OAH No. N2007110196

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 11, 2007, in Sacramento, California.

G. Lynn Thorpe, Deputy Attorney General, represented the complainant.

Respondent Zakary Johnston (respondent) appeared and represented himself.

Evidence was received and the matter was submitted on December 11, 2007.

FACTUAL FINDINGS

1. Daniel R. Smiley, Chief Deputy Director, Emergency Medical Services Authority (complainant), filed the Accusation in his official capacity.

2. Respondent holds Emergency Medical Technician-Paramedic (EMT-P) license number P21560 which was first issued in 2004 and is valid through September 30, 2008. At all times pertinent to the allegations contained in the Accusation, respondent was accredited as an EMT-P by the Northern California EMS Agency located in Redding, California.

3. On June 2, 2006, in the Superior Court, County of El Dorado, respondent was convicted, upon his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. As a result of the conviction, respondent was placed on summary probation for 48 months. The terms and conditions included four days in jail, with credit for two days time served and eligibility for an alternative work program, payment of a fine and penalties totaling $2247 at $50 per month, a

three-month long First Offender (drinking driver) program, and a prohibition against driving with any measurable amount of alcohol.

4. The circumstances relating to the offense involved respondent's participation in ski patrol races and the ceremony thereafter at a ski resort (Homewood) in the Lake Tahoe area on March 21, 2006. After the event, respondent was driving his pick up truck alone to his home when he left the highway traveling approximately 40 miles per hour and drove into a tree causing major damage to the truck and injuring respondent. The accident occurred at approximately 11:45 p.m. Respondent was transported to a hospital by ambulance. While restrained on a backboard device to prevent further injury, he flailed his arms and tried to remove the straps securing the device. At the hospital, he was handcuffed to a gurney by a local law enforcement officer because of his non-compliant behavior. A California Highway Patrol Officer arrived at the hospital after investigating the accident and arranging to have respondent's truck towed. He placed respondent under arrest at approximately 1:50 a.m. on March 22, 2006, after detecting the odor of alcohol emanating from respondent and noting respondent's slow and slurred speech and his red and watery eyes. Respondent refused any chemical test to determine his blood alcohol level.

5. Respondent remains on probation until June 1, 2010. He completed the required 18 months drinking driving course. He served the required two days in the alterative work program. He has paid approximately $850 of the fines and penalties. His driver's license was suspended for a year by the Department of Motor Vehicles and he has regained his driving privileges. His license to drive an ambulance remains suspended.[1]

6. Respondent is now 34 years of age. He has been married for four years and lives with his wife and a ten year old stepdaughter and a nine-month old daughter. Respondent is a high school graduate and has completed approximately 80 units of community college credits, all in the areas relating to his EMT-P license. Respondent received his EMT certification in 1995. He completed training for his paramedic license in September of 2004. Respondent was hired as an EMT I/Ward Clerk by Eastern Plumas Health Care (EPHC) in January of 2001. He was employed by EPHC as a paramedic beginning September of 2004. In July of 2006, respondent voluntarily ceased employment as a paramedic to devote his time to compliance with the court ordered terms of probation. In November of 2006, EPHC rehired respondent as a non-ambulance driving paramedic. Respondent was rehired based on a conditional employment agreement because of the conviction which respondent had divulged to his employer shortly after his arrest. The conditions imposed by the agreement between EPHC and respondent included random biological testing for alcohol and illicit controlled substances. Respondent was tested three times and he was told all of the tests were negative. It appears, however, that the tests may not have included those for the presence of alcohol.

7. Complainant asked respondent to submit to an evaluation by a substance abuse specialist and respondent agreed to be evaluated by Michael S. Parr, M.D. Dr. Parr specializes in alcohol and chemical dependency evaluation and treatment. He interviewed respondent and

[1] Respondent did not provide any date upon which the suspension may be lifted.

administered at least two screening tests, a CAGE questionnaire and the Michigan Alcohol Screening Test. Respondent's score on the latter test was two, indicating low risk for alcohol abuse. Respondent told Dr. Parr that his wife, who does not drink, was unable to drive him to the ski races on the day of the accident. He admitted that he had made a series of bad decisions on that occasion including having to much to drink, driving while intoxicated, and not spending the night at a friend's house. He acknowledged that he "behaved badly" towards other health care professionals who were trying to care for him. Respondent related to Dr. Parr that he began drinking at 16. He drank beer on the weekends and was occasionally drunk. After high school, he drank between two and six beers approximately once a month. He felt he was intoxicated approximately five or six times a year.[2] During the approximately 18 weeks during which respondent attended the drinking driver classes, he abstained from drinking. Since then, he has consumed one to two drinks-generally beer- on the weekends approximately once a month. He has no family history of substance abuse. Dr. Parr felt that respondent has been "severely affected appropriately" by his conviction. Dr. Parr noted respondent's candor with the appropriate parties, including his family, about his inappropriate choices. Dr. Parr concluded that no residential or outpatient alcohol treatment program was indicated for respondent. He did feel, however, that random alcohol testing should be continued as a term and condition of probation. Respondent told Dr. Parr that he would not have a problem abstaining completely from the consumption of alcohol.

8. Respondent submitted five character reference letters into evidence. Susan Marron, M.D., Medical Director of Emergency Services, EPHC., wrote a letter on November 12, 2007. Dr. Marron has worked with respondent since 2002, initially when Dr. Marron was an emergency room physician and since 2005 in her capacity as Director of Emergency Services and Ambulances Services. During their work together, respondent has earned Dr. Marron's trust and confidence as one of the best paramedics in the field. She described his skill and expertise as "exceptional." Dr. Marron noted that she has met many co-workers and patients who abuse drugs and alcohol in her work as an emergency room physician in Los Angeles, Washington, D.C., and Detroit. She is sure respondent is not among them. She has never heard any reports of tardiness, altered mental state, or suspicion of substance abuse relating to respondent.

Robert A. Stone, Assistant Fire Chief of the City of Portola Fire Department, authored a letter on December 1, 2007. Mr. Stone has known respondent since 2003 in respondent's capacity as a paramedic for EPHC. Mr. Stone was also a paramedic for a time and considered respondent his favorite EMT to work with. Respondent later worked for Mr. Stone when Stone became Ambulance Supervisor. Stone reported that respondent was never late, never called in sick, finished all assignments and never received any patient complaints or complaints from any other person.

Cathy Conant, Human Resources Manager for EPHC, wrote a letter on November 1, 2007. She recited respondent's employment history with the entity. She described his

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[2] In questioning by the Administrative Law Judge, respondent admitted to a "wet" reckless driving conviction when he was 19 years old.

performance as always excellent. Respondent was nominated for the employee of the year award. Ms. Conant related that respondent is closely monitored because of the conditional employment agreement. EPHC's general liability insurance carrier was notified of his rehiring.

Sylvia Trenchard, R.N., wrote her letter on November 8, 2007. She is the nursing supervisor for the EPHC Emergency Department. She has supervised respondent and worked side-by-side with him. She has always been impressed with his knowledge, skills, and compassion with patients. She has never had to counsel respondent or to discipline him. She has received only compliments regarding his work in the emergency department.

Barbara J. Williams, R.N., wrote the last letter in the group on November 9, 2007. She worked with respondent from 2002 until she left EPHC in February of 2007. She confirmed that respondent fully disclosed his conviction to EPHC. She was respondent's immediate supervisor when he was rehired conditionally. She described respondent as punctual, highly professional, and knowledgeable about his role as a paramedic. She said respondent's skills as a paramedic are "unsurpassed" and numerous citizens in the Plumas-Sierra Counties area owe their lives and successful medical outcomes to his rapid and skilled responses as a paramedic. She believes respondent has learned from his mistake. She has never been concerned about his work performance.

9. Respondent's conviction and the circumstances which led to the conviction, establish that on March 21, 2006, respondent misused alcoholic beverages. While respondent may now earnestly believe that the consumption of three beers over a one and a half hour period led to the accident, one may reasonably infer from all the facts that he consumed a great deal more. Respondent left the roadway traveling only 40 miles per hour and struck a tree causing major damage to his pickup truck. This occurred at approximately 11:45 p.m. He was on highway 50, some distance from Homewood Resort where he had consumed the beer. His behavior was erratic in the ambulance and hospital to the extent that he had to be restrained with handcuffs. Most significantly, he manifested the signs of clear intoxication at approximately 1:50 a.m. on March 22, 2007, some two hours later. The inevitable conclusion derived from these facts is that respondent consumed much more than three beers. His version of events reflects continuing denial about the seriousness of respondent's sporadic misuse of alcohol. While respondent's otherwise stellar performance as an EMT-P warrants a period of probation rather than outright revocation in this matter, the terms and conditions of probation should address respondent's lingering issue with the extent of his misuse of alcohol.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1798.200, subsections (b) and (c)(9) read:

> (b) The authority may deny, suspend, or revoke any EMT-P license issued under this division or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in

subdivision (c)...

(c) Any of the following actions shall be evidence of the threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate or licenseholder under this division:

(9) Addiction to the excessive use of, or misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

2. Cause exists, pursuant to section 1798.200, to discipline respondent's EMT-P license pursuant to Findings 2 through 9.

3. The disciplinary guidelines adopted by the Authority pursuant to California Code of Regulations, title 22, section 100172, have been considered in fashioning the appropriate terms and conditions of probation set forth below. In addition to the standard terms and conditions recited below as terms and conditions 1 through 7, optional conditions recommended for misuse of alcohol were included in terms and conditions 8 and 9. Recommended terms and conditions relating to a psychiatric/medical evaluation, and participation in a drug/detoxication/diversion program were not included because respondent was evaluated by Dr. Parr and he did not recommend either a residential or outpatient abuse program.

ORDER

License number P21560 issued to the respondent Zakary Johnston is revoked. However, such revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. **Probation Compliance:**

The respondent shall fully comply with all terms and conditions of the probationary order. The respondent shall fully cooperate with the EMSA in its monitoring, investigation, and evaluation of the respondent's compliance with the terms and conditions of his probationary order.

The respondent shall immediately execute and submit to the EMSA all Release of Information forms that the EMSA may require of the respondent.

2. **Personal Appearances:**

As directed by the EMSA, the respondent shall appear in person for interviews, meetings, and/or evaluations of the respondent's compliance with the terms and conditions of

the probationary order. The respondent shall be responsible for all of his/her costs associated with this requirement.

3. Quarterly Report Requirements:

During the probationary period, the respondent shall submit quarterly reports covering each calendar quarter which shall certify, under penalty of perjury, and document compliance by the respondent with all the terms and conditions of his/her probation. If the respondent submits his/her quarterly reports by mail, it shall be sent as Certified Mail.

4. Employment Notification:

During the probationary period, the respondent shall notify the EMSA in writing of any EMS employment. The respondent shall inform the EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.

Additionally, the respondent shall submit proof in writing to the EMSA of disclosure, by the respondent, to the current and any prospective EMS employer of the reasons for and terms and conditions of the respondent's probation.

The respondent authorizes any EMS employer to submit performance evaluations and other reports which the EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to the EMSA shall be by certified mail.

5. Notification of Termination:

The respondent shall notify the EMSA within seventy-two (72) hours after termination, for any reason, with his/her prehospital medical care employer. The respondent must provide a full, detailed written explanation of the reasons for and circumstances of his/her termination.

Any and all notifications to the EMSA shall be by certified mail.

6. Functioning as a Paramedic:

The period of probation shall not run anytime that the respondent is not practicing as a paramedic within the jurisdiction of California.

If the respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, the respondent must immediately notify the EMSA, in writing, of the date of such departure and the date of return to California, if the respondent returns.

Any and all notifications to the EMSA shall be by certified mail.

7. Obey All Related Laws:

The respondent shall obey all federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic. The respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if the respondent has not submitted fingerprints to the EMSA in the past as a condition of licensure, then the respondent shall submit his/her fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within 45 days of the effective date of this decision.

Within 72 hours of being arrested, cited or criminally charged for any offense, the respondent shall submit to the EMSA a full and detailed account of the circumstances thereof. The EMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.

Any and all notifications to the EMSA shall be by certified mail.

8. Abstinence from the Use of Alcoholic Beverages:

The respondent shall abstain from the use of alcoholic beverages.

9. Biological Fluid Testing:

The respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by the EMSA or its designee. Respondent may use a lab pre-approved by the EMSA or may provide to the EMSA the name and location of an independent laboratory or licensed drug/alcohol testing facility for approval by the EMSA. The EMSA shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When the EMSA requests a random test, the respondent shall provide the required blood/urine sample by the time specified, or within 12 hours of the request if no time is specified. When the EMSA requests a random test, the respondent shall ensure that any positive test results are conveyed telephonically by the lab to the EMSA within 48 hours, and all written positive or negative results are provided directly by the lab to the EMSA within 10 days. The respondent shall be responsible for all costs associated with the drug/alcohol screening.

At the EMSA's sole discretion, the EMSA may allow the random drug testing to be conducted by the respondent's employer to meet the requirement of random drug testing as set forth above. The results of the employer's random drug testing shall be made available to the EMSA in the time frames described above.

10. Completion of Probation:

The respondent's license shall be fully restored upon successful completion of probation.

11. Violation of Probation:

If during the period of probation the respondent fails to comply with any term of probation, the EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to the respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by the EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved at the hearing shall be limited to whether the respondent has violated any term of his/her probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, the respondent and the EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

Dated: January 3, 2008

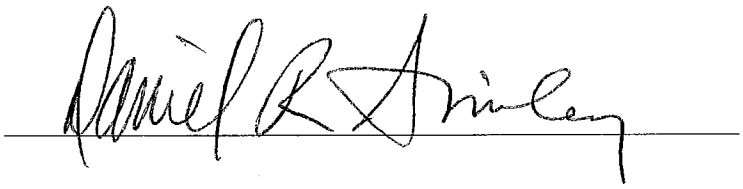
KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of:	Case No. 06 0065
ZACKARY JOHNSTON	OAH No. N2007080857
Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Emergency Medical Services Authority as its Decision in the above-entitled matter.

This Decision shall become effective on Feb 6, 2008.

IT IS SO ORDERED Jan 7, 2008.